

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**ORVIL DUANE HASSEBROCK and  
EVELYN HASSEBROCK,**

**Plaintiffs,**

**v.**

**ROBERT G. BERNHOFT, *et al.*,**

**Defendants.**

**No. 10-CV-679-WDS**

**ORDER**

**STIEHL, District Judge:**

Before the Court is plaintiffs Orvil Duane Hassebrock and Evelyn Hassebrock's motion for entry of default against defendant Robert E. Barnes (Doc. 58). Barnes's response to the motion is not yet due.<sup>1</sup> Plaintiffs filed an amended complaint on March 22, 2013, and served Barnes on April 12. Now, citing Federal Rule of Civil Procedure 12(a)(1)(A)(i), they assert that Barnes had 21 days after he was served, until May 3, to file his answer, but he has not done so. Instead he filed a motion to quash challenging service under Rules 12(b)(5) and 4(k) (Doc. 53). Plaintiffs claim they are entitled to entry of default.

Rule 12 only sets the 21-day time limit "[u]nless another time is specified by this rule or a federal statute." Fed. R. Civ. P. 12(a)(1). Barnes's motion to quash alters the time for filing an answer. If the Court denies the motion to quash, Barnes's answer will be due within 14 days after he receives notice. *See* Fed. R. Civ. P. 12(a)(4)(A). If the Court grants the motion, his answer will not be due at all. *See, e.g., Silva v. City of Madison*, 69 F.3d 1368, 1376 (7th Cir. 1995) ("[A] responsive pleading is required only after service has been effected and the party has been made subject to the jurisdiction of the federal

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<sup>1</sup> Plaintiffs' motion was filed on May 10, 2013. A response is not due until May 24. *See* SDIL-LR 7.1(g).

courts.”). The Court has not decided Barnes’s motion, so his answer is not yet due. Moreover, entry of default is permitted against a party who has “failed to plead or otherwise defend,” Fed. R. Civ. P. 55(a), and Barnes has not failed to defend; he filed the motion to quash. Plaintiffs’ motion for entry of default (Doc. 58) is, accordingly, **DENIED**.

**IT IS SO ORDERED.**

**DATED: May 13, 2013**

**/s/ WILLIAM D. STIEHL**  
**DISTRICT JUDGE**